Staff Report

To	**City Council**
Service Area	Office of the Chief Administrative Officer
Date	Wednesday, November 13, 2024
Subject	**Development Charge Interest Policy Update**

Recommendation

That the updated Development Charge Interest Policy included as Attachment-1 of Development Charge Interest Policy Update 2024-443 be approved.

Executive Summary

Purpose of Report

To highlight the key updates from the current Development Charge (DC) Interest Policy to the proposed updated Policy.

Key Findings

The key updates to the policy are:

1. Updating the methodology for calculating the maximum interest that can be charged for DCs owing in accordance with changes to the Development Charges Act (DCA) through Bill 23.
2. Clarifying that, in a situation where the frozen DC rate plus interest results in a higher charge than the DC rate in effect at the time of permit issuance, the lower of the two will be charged.
3. Introducing a fourteen-day administrative grace period for the payment of DCs plus interest when a DC rate freeze applies, during which additional interest will not be accrued.

Strategic Plan Alignment

Collecting interest on outstanding DCs in accordance with the DC Act helps to ensure that growth pays for growth, to the extent permissible by the DC Act. The DC Interest Policy supports City Building objective 6.1 – meet our housing pledge, specifically, initiative 6.1.2 – identify and address gaps in our growth revenues.

Future Guelph Theme

City Building

Future Guelph Objectives

City Building: Improve housing supply

Financial Implications

The updated basis for the interest rate linked to average bank prime plus one percentage point may positively or negatively impact the amount of DC interest collected by the City, depending on the difference between prevailing interest rates and the Non-residential Building Construction Price Index (NRBCPI) over time.

Capping the calculation of frozen DC rates plus interest at the current DC rates reduces the amount of possible DC interest revenue collected but the application of a cap is consistent with recent Ontario Land Tribunal (OLT) decisions.

The proposed administrative grace period reduces DC interest collected by the City but is a short-term, reasonable measure intended to support the overall objective of promoting Guelph as a place to build. The amount of the impact is case-specific and dependent on the DCs owing and the prevailing interest rate in effect.

Report

The Development Charge Interest Policy clarifies why the City charges interest on DCs not immediately collectible due to either rate freezes or instalment payments in accordance with enabling provisions in the *Development Charges Act, 1997* ("DC Act") and defines the methodology for calculating interest owing.

This update to the Development Charge Interest Policy was undertaken to reflect legislative changes introduced through Bill 23 in November 2022.

The key changes to the current policy are:

1. **Defining the maximum interest rate that can be applied to DCs.** The current policy defines the interest rate as the NRBCPI year over year change as of September 30 of the prior year. Previously silent on interest rates, Bill 23 introduced a new formula to the DC Act for calculating a "base rate", which is the average prime rate of each of the Royal Bank of Canada, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal, and the Toronto-Dominion Bank. The maximum interest rate that can be charged is one percentage point above this base rate. The updated policy also outlines the timelines for updating the base rate, per the DC Act.
2. **Removing additional two per cent premium on the City's interest rate for non-secured DCs payable by installments.** The current policy states that where no security is provided, in accordance with the City's Letter of Credit Policy, the interest rate charged will be equal to the interest rate in effect at the time of application, plus two per cent. This has been removed, and the maximum allowable interest, as defined in the DC Act, will be charged for all outstanding DCs.
3. **Clarifying the amount charged when frozen rates plus interest exceed the rate in effect at the time of permit.** Interest rates are set (i.e. "frozen") for developments requiring either a site plan application and/or a zoning by-law amendment, for a period of up to two years from the date of complete application. Interest is charged on the frozen DCs to compensate for revenue loss due to delayed collection. In June 2024, the OLT issued a decision on a complaint against another municipality where the frozen rate plus interest resulted in the payment of interest that exceeded the rate in

effect at the time of permit issuance. The OLT interpreted the DC Act as having an implied cap, with the maximum interest that could be collected by the municipality in situations involving a statutory "freeze" being no higher than the rate that would apply at the time of building permit. The proposed update to the current policy reflects this OLT decision and clarifies that the City will charge the lesser of the calculated interest on a "frozen" DC rate and the prevailing rate at the time of permit issuance.

4. **Introducing a fourteen-day administrative grace period for the payment of DCs plus interest when a DC rate freeze applies.** This administrative grace period is to allow City staff time to complete and communicate the calculations of DCs plus interest owing, as well as time for builders to remit payment. During this time, no additional interest will accrue.

Financial Implications

The text of the City's current DC Interest Policy interest rate sets interest based on the NRBCPI year-over-year change as of September 30 of the prior year. This aspect of the DC Interest Policy was nullified in November 2022 when Bill 23 received Royal Assent and stipulated a statutory maximum interest. Since then, the maximum interest rate as defined in the DC Act has been the basis for interest calculations. This policy update brings our corporate documentation in line with current legislation.

This change may have a notional positive or negative impact the amount of DC interest collected by the City over time, depending on the difference between prevailing interest rates and the NRBCPI. When the legislative change first came into effect, it had the immediate impact of reducing the interest rate from 13.7 per cent (the NRBCPI indicator) to 3.55 per cent. Since then, interest rates have steadily increased, and inflation has decreased, reducing the differential between the old and new interest formula.

Capping the calculation of frozen DC rates plus interest at the current DC rates reduces the amount of possible DC interest revenue collected but is consistent with previous OLT decisions interpreting the intention of the DC Act.

The introduction of a fourteen-day administrative grace period provides a reasonable amount of time for calculations to be completed and payments to be processed, providing clarity for both City staff and builders when a DC rate freeze is applicable to a development. The financial impact of this grace period in any case will depend on the DCs owing and the prevailing interest rate. To provide a rough benchmark, at the prevailing interest rate in September 2024 of 8.20 per cent, the lost interest revenue for the City on $100 thousand of DCs owing for fourteen days would be $315.

Consultations and Engagement

None.

Attachments

Attachment-1 Development Charge Interest Policy

Departmental Approval

None.

Report Author

Jelena Savic, Corporate Analyst

This report was approved by:

Shanna O'Dwyer
Acting Treasurer, General Manger, Finance
Office of the Chief Administrative Officer
519-822-1260 extension 2300
shanna.odwyer@guelph.ca

This report was recommended by:

Tara Baker
Chief Administrative Officer
Office of the Chief Administrative Officer
519-822-1260 extension 2221
tara.baker@guelph.ca